Supreme Court U.S.
FILED
SEP 28 1908
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE COMPANION COMPANY
v.
THE UNITED STATES AND ARGUS ZOLLER. } No. 361.

BRIEF FOR APPELLANTS.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

THE CORRALITOS COMPANY
v.
THE UNITED STATES AND APACHE Indians. } No. 267.

BRIEF FOR APPELLEES.

The petition in the court below alleged that the claimant company, chartered under the laws of the State of New York, was engaged in business in the State of Chihuahua, Mexico; that while so engaged, during the years 1881 and 1882, certain Indians belonging to tribes of the Apaches, which were located in the Territories of New Mexico and Arizona, crossed over into Mexico and camped for weeks and months on lands belonging to the claimant company, and took and drove away certain of their property, consisting principally of horses, cattle, and sheep. For this loss of property the claimant company seeks indemnity under the act of March 3, 1891, entitled "An act to provide for the adjudication and payment of certain Indian depredation claims." (1 Supp. R. S., 2d ed., p. 913.)

The defendants plead that the depredation having been committed in the Republic of Mexico the court was without jurisdiction. The court sustained the plea and dismissed the petition.

The act of March 3, 1891, confers upon the Court of Claims jurisdiction over "all claims for property of citizens of the United States taken or destroyed by Indians belonging to any band, tribe, or nation in amity with the United States." In the terms of this act there is no limitation as to place. As said by Davis, J., in the opinion of the Court of Claims, "Why should there be? The general principle of law is that the statutes of a country do not run beyond its territorial jurisdiction except upon its merchant vessels upon the high seas, usually upon the vessels of its navy, and in some cases (provided for by treaty) upon merchant vessels and citizens within the jurisdiction of the few countries where the privilege of 'extraterritoriality' exists."

This principle is so elementary that it is not deemed necessary to argue it at length. Counsel for the appellant opposes to this statement of the Court of Claims the opinion of Alexander Hamilton as expressed in the 82d number of the Federalist, where it is stated that—

> The judiciary power of every Government looks beyond its local or municipal laws and in civil cases lays hold of all subjects of litigation between parties within its jurisdiction, though the causes of dispute are relative to the laws of the most distant part of the globe. Those of Japan, not less than of New York, may furnish objects of legal discussion to our courts.

But the extent of the judiciary power in taking cognizance of offenses committed in foreign territory is a wholly different question from the extension of the municipal statutes over such territory. The subject under discussion in the Federalist was whether the State courts would have jurisdiction over cases arising under laws to be passed by Congress under the proposed Constitution of the United States. Hamilton expressed his opinion that in every case where they were not expressly excluded they would, of course, take cognizance of the causes to which such legislation might give birth. In this connection he used the language quoted above, which, if it had been applied to the case at bar, must have led the Court of Claims to seek to apply the municipal laws of Mexico to the dispute between the parties to this suit. Its significance is wholly contrary to the supposition that the statutes of a country run beyond its territorial jurisdiction.

The quotation from Hamilton is sometimes used in connection with the following sentence from Westlake on Private International Law, page 54, section 58:

> Rights which have accrued by the law of a foreign state are treated as valid everywhere; cognizance is therefore taken of extraterritorial facts and of persons not generally subject to the jurisdiction.

In *Dennick* v. *Railroad Company* (103 U. S., 11), cited by the appellant, this court held that "wherever either by the common law or the statute law of a State a right of action has become fixed and a legal liability incurred, that liability may be enforced and the right of action pursued in any court which has jurisdiction of such matters

and can obtain jurisdiction of the parties." But that was a case where the liability was incurred under the law of the State where the transaction took place. The court says further, "A party legally liable in New Jersey can not escape that liability by going to New York. If the liability to pay money was fixed by the law of the State where the transaction occurred, is it to be said that it can be enforced nowhere else, because it depended upon statute law and not upon common law?"

Stone v. *The United States* (167 U. S., 178), also cited by the appellant, was an action brought in the United States court in the district of Washington to recover for timber unlawfully cut from lands of the United States in Idaho. The court held that, inasmuch as the gravamen of the injury complained of was the conversion of the timber and not the damage to the real property, the action was not local, but transitory, and could be entertained by any court of the United States having jurisdiction over the parties.

All these cases relate to the enforcement by foreign courts of the law of the place where the cause of action originated; and they do not touch the contention in this case, which is that the court shall apply to a depredation committed in Mexico a statute of the United States, creating liability and providing a remedy.

THIS ACTION NOT ANALOGOUS TO ORDINARY CIVIL CAUSES.

The appellant contends that the question is not whether the statutes of a country extend beyond its territorial jurisdiction, but is, "can civil obligations, arising beyond

our territorial limits, be enforced in the courts of the United States where they have jurisdiction of the subject-matter and of the parties to the suit?" In pursuance of this question he properly states the general principle of law to be that courts may entertain transitory actions for civil injury, wherever committed, if they have jurisdiction of the parties.

Has this rule any application to the case at bar? We think not, for the reasons which follow.

THE COURT OF CLAIMS A COURT OF LIMITED JURISDICTION.

In the first place, the rule relates to courts of general jurisdiction and to litigation between subjects who stand on an equality before the law. This action, on the other hand, is brought in the Court of Claims, which is a court of limited jurisdiction. The Court of Claims has no jurisdiction over any of the parties to this suit except as it is conferred by the special act of Congress of March 3, 1891, and it is to the terms of that act alone that the court must look for the grant of the jurisdiction.

THE DEFENDANTS NOT TRESPASSERS OR DEBTORS.

A further reason is that the general principle regarding transitory actions contemplates a trial of the cause under the principles of law prevailing where the cause of action originated. The examples given in the appellant's brief are cases of debt or trespass in which the individual who wrongfully obtained possession of property or who became indebted to the plaintiff is sued to recover the value of such property or the amount of such

debt. If this were an action of that sort and the case came before a court of general jurisdiction the general principles of law would be applicable, but it was not alleged in this case that the defendants or either of them had ever injured the plaintiff.

The defendants were the United States and the Apache Nation of Indians. The petition alleges that certain individuals belonging to the Apache Nation of Indians took from the claimant company in Mexico property valued at $75,000. Wherein does this give him a right of action, under the general principles of law or under the statutes of the country in which the alleged conversion occurred, against either of the defendants? If he could bring into court the trespasser upon his property, the person who had benefited by the wrongful conversion, his case would be different, and the case of *Mitchell* v. *Harmony*, cited by the appellant, would be pertinent; but his right to recover from the Indian tribe or from the United States must depend solely upon the statute of the United States.

This statute is anomalous in character. It assumes to create and enforce a liability, on the part of an organized political body, for the tortious acts of individuals owing it allegiance. This, without the consent of that political body and regardless of its approval, connivance, consent, or even knowledge of the act complained of. The only analogy to this statute known to the common law is the old statute of Winchester making the hundred responsible for the value of stolen property, on failure to cause a hue and cry to be made for the capture of the thief. A somewhat similar statute has been proposed in

some of the States, providing that the family of a man who has been lynched may recover damages from the county in which such violation of the law took place. It is inconceivable, however, that it should be seriously argued that either the statute of Winchester or such a statute in regard to lynching extended in their application beyond the actual territorial jurisdiction of the locality concerned.

STATUTE SHOULD BE CONSTRUED STRICTLY.

The statute should be construed strictly, because it is a statute granting jurisdiction to a court of limited jurisdiction; because the liability which it enforces is of an extraordinary character, unknown to the common law; because it is a statute giving the right to sue the United States, in derogation of sovereignty. On this head this court has said, in the case of *Leighton* v. *The United States* (161 U. S., 291):

> Nor is this a matter in which the Government is uninterested. In case of an award by the Court of Claims the United States becomes in fact, if not in form, the primary and solvent judgment debtor. The recourse provided over against the Indian tribe, while it may be certain as to amount, is uncertain as to collection, and before any judgments should be rendered binding the United States it is familiar and settled law that the statute claimed to justify such judgment should be clear and not open to debate.

Another reason for a strict construction of the statute is found in the fact that it is legislation by Congress affecting the rights of Indian tribes. In the case of

Marks v. *The United States et al.* (161 U. S., 297) this court said:

> Again, as often affirmed in the decisions in this court, the Indians are, in a certain sense, wards of the United States, and the legislation of Congress is to be interpreted as intended for their benefit.

If there were any doubt whether the jurisdiction conferred by the act of March 3, 1891, included an act committed beyond the territorial jurisdiction of the United States, these considerations would be sufficient to resolve the doubt in favor of the appellees.

THE ACT OF 1834.

The claimant company would have been equally barred of recovery in the Court of Claims on another ground. The act of March 3, 1891, is merely jurisdictional in character and creates no new claims against Indian tribes or against the United States. For the foundation of his claim, the claimant must turn to previous legislation. The right of action for the prosecution of which a forum is provided by the act of March 3, 1891, is derived from the legislation of Congress binding the Indian tribes to make restitution in such cases, and, in the event of their failure or refusal to do so, guaranteeing to the claimant eventual indemnification by the United States.

In the case of *Leighton* v. *The United States* (29 C. Cls. R., 288) the Court of Claims said:

> This act is purely remedial in its nature; it provides a forum where certain alleged rights may be litigated; but it creates no rights except in so far as it imposes a liability on the United States for plain-

> tiff's benefit. To find a wrong which it hopes to remedy, we must turn to the act of 1834.

And

> The act is remedial, therefore, only for claims which existed prior to the passage of the act.

The reason for such reference to the act of 1834 is not at all, as counsel for appellant seems to infer, for the purpose of determining the construction of any ambiguous language in the act of 1891. The decision of the court explains itself; the very fact stated by counsel for appellant that the act of 1834 made no [effectual] provision for the adjudication and payment of any claims, made necessary the act of 1891 conferring jurisdiction of such claims upon the Court of Claims. Under the provisions of the act of 1834 a large body of claims had grown up, had been examined and reexamined in the Interior Department, which had submitted recommendations for payment in many cases, and these claims were pressing upon every Congress for settlement. The act of March 3, 1891, conferred upon the Court of Claims the jurisdiction to determine them; but it did not, as the Court of Claims has said, create any new claims, and did not define old claims, except as it restricted the jurisdiction of the court by certain provisions in regard to the status of the claimants and the Indian tribes.

The act of 1834, referred to by the court in the opinion in the Leighton case, was a continuation of the provisions in the act of May 19, 1796, in the act of March 3, 1799, and in the act of March 30, 1802. It provided that—

> If any Indian or Indians belonging to any tribe in amity with the United States shall, *within the*

> *Indian country*, take or destroy the property of any person lawfully within such country *or shall pass from the Indian country into any State or Territory inhabited by citizens of the United States*, and there take, steal, or destroy, etc.

The same statute defines the term "Indian country," and while that definition, as stated in the appellant's brief, was not carried into the Revised Statutes of the United States, yet it may, as this court has held in *Ex parte Crow Dog* (109 U. S., 556), be referred to for the purpose of ascertaining the meaning of the language in the statute.

Now the claim of the appellant has no existence under this statute unless it be for a depredation committed "within the Indian country" or in a State or Territory inhabited by "citizens of the United States." It is not contended that the "Indian country" of the act of 1834 extended beyond the boundaries of the United States; and it would be a fanciful interpretation of the language of the statute to say that because the claimant company, composed of citizens of the United States, had a ranch and other property in Mexico, and because other Americans might be temporarily residing there, Mexico was therefore "a State or Territory inhabited by citizens of the United States."

There was, therefore, in the case of this appellant no claim in existence under the statute law of the United States for the jurisdiction of the Court of Claims to act upon.

ACT OF 1834 DID NOT COVER DEPREDATIONS COMMITTED BEYOND THE TERRITORIAL LIMITS OF THE UNITED STATES.

If it were necessary to adduce reasons for a proposition which is so self-evident, and which is so clearly expressed by the language of the statute itself, they are not wanting. A sufficient reason may be found in the purpose of the statute. This was, without doubt, to prevent reprisals on the part of the white inhabitants of the frontiers, and thus lessen the danger of Indian wars; and, by fear of pecuniary loss to the tribe, to induce the Indian authorities to restrain their lawless elements from committing depredations. Both these reasons would fail in the case of depredations committed on foreign soil. There the United States would have no interest in restraining hostilities between the Indians and others and would have no power to prevent reprisals. On the other hand, the Indian tribe resident within the limits of the United States would have no power over its members once they had crossed the frontier into Mexican territory.

Another reason is found in the fact that the statute has been expressly extended by act of Congress over new possessions of the United States, acquired after the passage of the original act (9 Stat. L., 587). If the act were operative in the Territory of New Mexico when it was a part of old Mexico why extend it to that Territory by legislation?

Still another, and conclusive, reason is given by Justice Davis in the able opinion of the Court of Claims in this case, where, after citing numerous provisions of the same

statute making detailed regulations in regard to commerce with the Indian tribes and providing for their supervision by officers of the United States, he says:

> The act in all its parts is harmonious and every section shows clearly that Congress was legislating only for Indian tribes within the territorial jurisdiction of the United States. It is impossible to assume that the Congress would attempt to make such detailed regulations as to Indians outside the United States, either in Mexico or Canada, or attempt to prescribe the method in those countries of a statute of the United States or assume in these foreign jurisdictions to provide officers to superintend that enforcement within those friendly nations.

PROPERTY NOT TAKEN TO THE UNITED STATES.

It is contended by counsel for the appellant that whether or not the act of 1834 applied to territory beyond the limits of the United States, jurisdiction is acquired in this case by the fact that the property was brought to the United States, the offense thus having been committed in both countries.

We need not discuss this proposition, as it is not raised by the record; the petition does not allege the fact recited in the appellant's brief. The language in the petition is:

> They (the Indians) frequently camped for weeks and months on our lands, and drove the stock into the Sierra Madre, and killed them *or* drove them out of the State of Chihuahua into New Mexico and Arizona.

There is here no positive allegation that the property was driven into the United States. The conclusion, from the language of the petition, would be rather that the disposition made of the stock, after the Indians drove them into the Sierra Madre Mountains, was unknown to the petitioner, which is doubtless the case.

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